

SENATE BILL REPORT

SB 6731

As Reported By Senate Committee On:
Labor, Commerce, Research & Development, February 05, 2008

Title: An act relating to consolidating, aligning, and clarifying exception tests for determination of independent contractor status under unemployment compensation and workers' compensation laws.

Brief Description: Consolidating, aligning, and clarifying exception tests for determination of independent contractor status under unemployment compensation and workers' compensation laws.

Sponsors: Senators Kohl-Welles, Hobbs, Murray, Keiser, Marr, Fairley, Regala, Tom and Kline.

Brief History:

Committee Activity: Labor, Commerce, Research & Development: 1/22/08, 2/5/08 [DPS, DNP].

SENATE COMMITTEE ON LABOR, COMMERCE, RESEARCH & DEVELOPMENT

Majority Report: That Substitute Senate Bill No. 6731 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kohl-Welles, Chair; Keiser, Vice Chair; Franklin, Murray and Prentice.

Minority Report: Do not pass.

Signed by Senators Holmquist, Ranking Minority Member; King.

Staff: Kathleen Buchli (786-7488)

Background: In 2007 the Legislature enacted SB 5926 relating to the underground economy in the construction industry. The bill created the Joint Legislative Task Force on the Underground Economy in the Construction Industry (Task Force) to formulate a state policy to establish cohesion and transparency between state agencies to increase oversight and regulation of the underground economy practices in the construction industry. The Task Force met six times in 2007 and discussed issues relating to the underground economy in the construction industry including current independent contractor laws in this state and other states.

Whether a person is an independent contractor or an employee determines if the person is covered for purposes of workers' compensation and unemployment benefits and whether industrial insurance premiums and unemployment taxes must be paid by the employer. The

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term "independent contractor" is not defined in code, rather, this concept is embodied in the exceptions to the definition of "employment."

Although the exception tests used by the Department of Labor and Industries (L&I) and the Employment Security Department (ESD) are substantially the same, there are some differences that could result in the worker being treated as an independent contractor for purposes of one agency and an employee for purposes of another.

Summary of Bill (Recommended Substitute): The exception tests used by L&I and ESD are clarified. Both L&I and ESD will use a seven-part test to establish when work in construction is done by independent contract. This test establishes that work will not be considered employment if: the individual has been and will continue to be free from control or direction over the performance of the service; the service is outside the usual course of business for which such service is performed; the individual is customarily engaged in an independently established trade, occupation, profession, or business; the individual files a schedule of expenses with the internal revenue service for the type of business the individual is conducting; the individual has an active and valid certificate of registration with the Department of Revenue (DOR) and an active and valid account with other state agencies as required; the individual maintains a separate set of books or records; and the individual has a valid contractor registration or electrical contractor license if the work requires such registration or license.

EFFECT OF CHANGES MADE BY LABOR, COMMERCE, RESEARCH & DEVELOPMENT COMMITTEE (Recommended Substitute): The scope of the bill is modified to apply to only independent contractors and employees working in construction.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: The underground economy equals lost tax revenue. This bill is the result of labor and business working towards a common goal. Bringing the agencies together to work on this subject was a positive step. Both bills reflect subcommittee and task force recommendations; this bill is the blending bill that was discussed at the last task force meeting. Although this bill does not contain the agreed to language from the last task force meeting, it is okay. It is estimated that underreporting and nonreporting results in 100 million dollars a year in lost revenue.

OTHER: There is support for the uniformity of the definition of employment; however, this is a de facto way of defining independent contractor and does not define that term outright. Changes should be made to clarify that taxicabs are independent contractors.

Persons Testifying: PRO: David Johnson, Washington State Building Trades; Bob Abbott, Laborers District Council.

OTHER: Carl Hammersburg, L&I; Lisa Marsh, ESD; Drew Shirk, DOR; Rick Slunaker, Associated General Contractors; Chris Van Dyk, BYG Taxicab Cooperative.